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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/04/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,576

Applicant(s)

HAMMETT, ROY

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,15-17,19,20,22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,15-17,19,20,22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al.

(‘277)(Apps 1).

Apps discloses a low depth bottle crate having a peripheral wall (24) of uniform height, the peripheral wall including a pair of side walls and a pair of end walls, a crate bottom connected to the peripheral wall, a plurality of substantially U-shaped cut-outs in upper portions of the side and end walls defining columns between the cut-outs, lower portions (26) of the peripheral wall adjacent the crate bottom formed as solid, continuous bands along the side walls, the lower portions of the peripheral wall and the columns being of single wall construction including hollow caps at upper ends of the columns that are of double wall construction, handle cut-outs (below handles 90) are provided in lower portions of the end walls, the crate bottom having a lower surface formed with an array of recesses (upwardly recessed bottle top receiving areas 50) adapted to engage bottle caps of bottles carried in an underlying crate. Laterally spaced wedge elements on outside surfaces of the corner columns at the lower end of the columns at the transition from the upper portion to the lower portion can be clearly seen in Fig. 1 (no reference sign is provided in the drawings).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 1 in view of Apps et al. ('279)(Apps 2).

Apps 1 discloses the invention except for the plural groups of inwardly directed ribs. Apps 2 teaches ribs (the ribs extending between ribs 56, see Fig. 2 and 4) which connect lower portions of the side and end walls to the crate bottom, the ribs are in groups of two and three ribs, each group arranged directly below a respective cut-out and extending vertically along the peripheral wall from each cut-out to the crate bottom. Apps 2 also teaches ribs as that portion of the column that extends inwardly from the side or end wall from the cut out to the bottom and directly beneath the cut out (as shown in Fig. 12 and 13) and ribs associated with inside wall surface bumps or steps that extend vertically from the cut out to the bottom as shown in Fig. 13 adjacent to the corner column 34 on the left side of Fig. 13. It would have been obvious to add ribs in order to provide sufficient reinforcement to the lower portion of the side and end walls and the crate bottom. It would have been obvious to provide ribs in sufficient number, such as three per group or three per each cut out, to adequately support the load of filled bottles.

Claims 12, 15-17, 19, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 1 in view of Hammett ('487) (Hammett).

For claims 12 and 17, Apps 1 discloses the invention except for the connection in the middle of the handle. Hammett teaches the connection in the middle of the handle. It would have been obvious to add a connection in the middle of the handle in order to support the middle portion so that the handle doesn't weaken or break due to excessive deflection and stress near the middle of the handle due to lifting of full crates. Both Apps 1 and Hammett accomplish the connection of the handle to the bottom wall by a strut extending from the handle bar to a raised pedestal on the crate bottom. The Apps 1 connection could be repeated at the midpoint of the handle or the Hammett connection could be added at the midpoint of the handle.

For claim 12, the wedge slides are located on the outer surface of the corner columns (see Fig. 1).

For claims 17 and 19, the combination discloses the invention except for the L-shaped ribs. Hammett teaches L-shaped ribs. It would have been obvious to add L-shaped ribs in order to further strengthen the connection of the side and end walls to the bottom. Three ribs are shown in Hammett and this group of three ribs is distributed with one L-shaped rib per each cut out.

For claim 22, the combination discloses a single bottle support rib for the inner wall of the hollow cap. The combination discloses the invention except for the pair of bottle support ribs 79. It would have been obvious to provide a pair of ribs as a matter of design choice in order to further reinforce or further protect the inner wall of the hollow cap.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under

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37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc